

## § 42.54

(g) *Costs.* Except as the Board may order or the parties may agree in writing, the proponent of the direct testimony shall bear all costs associated with the testimony, including the reasonable costs associated with making the witness available for the cross-examination.

[77 FR 48669, Aug. 14, 2012, as amended at 80 FR 28565, May 19, 2015]

### § 42.54 Protective order.

(a) A party may file a motion to seal where the motion to seal contains a proposed protective order, such as the default protective order set forth in the Office Patent Trial Practice Guide. The motion must include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute. The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information, including, but not limited to, one or more of the following:

- (1) Forbidding the disclosure or discovery;
- (2) Specifying terms, including time and place, for the disclosure or discovery;
- (3) Prescribing a discovery method other than the one selected by the party seeking discovery;
- (4) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (5) Designating the persons who may be present while the discovery is conducted;
- (6) Requiring that a deposition be sealed and opened only by order of the Board;
- (7) Requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (8) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Board directs.

(b) [Reserved]

## 37 CFR Ch. I (7–1–15 Edition)

### § 42.55 Confidential information in a petition.

A petitioner filing confidential information with a petition may, concurrent with the filing of the petition, file a motion to seal with a proposed protective order as to the confidential information. The institution of the requested trial will constitute a grant of the motion to seal unless otherwise ordered by the Board.

(a) *Default protective order.* Where a motion to seal requests entry of the default protective order set forth in the Office Patent Trial Practice Guide, the petitioner must file, but need not serve, the confidential information under seal. The patent owner may only access the filed sealed information prior to the institution of the trial by agreeing to the terms of the default protective order or obtaining relief from the Board.

(b) *Protective orders other than default protective order.* Where a motion to seal requests entry of a protective order other than the default protective order, the petitioner must file, but need not serve, the confidential information under seal. The patent owner may only access the sealed confidential information prior to the institution of the trial by:

- (1) agreeing to the terms of the protective order requested by the petitioner;
- (2) agreeing to the terms of a protective order that the parties file jointly; or
- (3) obtaining entry of a protective order (*e.g.*, the default protective order).

### § 42.56 Expungement of confidential information.

After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.

### § 42.61 Admissibility.

(a) Evidence that is not taken, sought, or filed in accordance with this subpart is not admissible.

(b) *Records of the Office.* Certification is not necessary as a condition to admissibility when the evidence to be